



Call Your Attorney: What Your Servicing Judge Advocate Can Do for You

by MAJ Brent W. Thompson

Remember “The Two Bobs” from the movie *Office Space*? Bob Slydell and Bob Porter are two management consultants hired to help a downsizing company identify which workers to lay off. After a series of interviews, they ask an agitated employee the question that has become a famous pop-culture reference: “What would you say you do here?”¹

As a judge advocate, I have been on the receiving end of the “What do you do?” question a time or two myself. While a lawyerly answer to the query would be “It depends,”² a better response might be, “A little bit of everything.”

Some staff responsibilities in the military are relatively straightforward. For instance, sections like the S-2, S-3 and S-4 specialize in well-defined warfighting functions like intelligence, operations and logistics, respectively.³ A judge advocate’s duties are less distinct. The legal section is involved in any issue that contains a legal component – and almost every staff section or process includes a legal component.

To outline the contours of our varied legal practice, the U.S. Army Judge Advocate General’s Corps (JAGC) uses a set of four guiding principles called “the constants”: mastery of the law,

servant leadership, stewardship of the profession and principled counsel.⁴ I will explain what the judge advocate can do for an organization using the “Four Constants” framework.

Mastery of law

Doctrinally JAGC attorneys provide legal services to two entities: 1) the Army and 2) Soldiers and family members.⁵ Legal services to the Army include administrative and civil law, contract and fiscal law, military justice and national-security law.⁶ Legal support to Soldiers and family members includes legal assistance, claims and trial-defense service.⁷

Within each legal function, judge advocates perform discrete tasks ranging from courts-martial and adverse administrative actions, to advocating positions in environmental law and cyberspace law, to guiding commanders through complex battlefield issues in the operational environment.⁸

Army judge advocates follow a “versatile and expert” career model in which the JAGC expects attorneys to specialize in at least one legal function while maintaining general skills across the breadth of legal practice.⁹ Your servicing judge advocate is thus a “jack of all trades, master of some” who can provide wide-ranging legal advice.¹⁰ A helpful-practice tip, then, is to CYA:

call your attorney.

Are you:

- In the logistics section and initiating a Financial Liability Investigation of Property Loss? Call your attorney.
- A company commander who suspects one of your Soldiers has been ingesting illegal drugs? Call your attorney.
- In the operations section and have been “voluntold” to plan the unit ball? Call your attorney.
- Facing an executive officer and a private organization asking if they can donate some gifts to the troops? Call your attorney.

I think you can see the trend here. No matter the subject, if it involves laws or regulatory guidance, your servicing judge advocate can assist in navigating the issue. Your attorney can help you avoid major legal pitfalls if you include them early and often. Judge advocates like to use the term “preventive law” because we want to anticipate and prevent legal problems before they arise. Our aim, always, is to help commanders and staff members arrive at the best and safest “yes.”

If the judge advocate cannot assist, the legal section will usually direct the person to a place that can help. For example, a brigade judge advocate

represents the government and thus cannot advise a Soldier who is subject to an administrative investigation. However, the attorney or paralegals will often provide the Soldier with directions to the installation's legal-assistance office or trial-defense service. They exist to serve Soldiers and families with a broad range of legal issues.

Servant leadership

Servant leadership is a philosophy in which a leader makes it their mission to serve others.¹¹ The judge-advocate role is centered on service to the command. By design, Army judge advocates rarely command a tactical organization. Instead, the legal adviser's role is to help the commander and other staff members be successful as they lead the organization. Serving on a military staff is a team sport,¹² and judge advocates know they are in a supportive role.

Key-developmental time at the brigade level can sometimes become a knife fight as field-grade officers compete for limited opportunities to eventually command a battalion.¹³ As a brigade judge advocate, I knew that battalion command was never a possibility for me, which freed me up to help fellow field-grade officers with their tasks and missions without concerning myself with consequence or reward.

I was also acutely aware that the brigade commander chose the executive officer and S-3 – and did not choose me – so it was essential to respect their positions and support them in any way I could. Most judge advocates understand their role as a team player and focus on assisting fellow staff members, adjacent units and the higher headquarters.

One way a judge advocate can be a valued contributor is during operational planning and the military decision-making process (MDMP). Lawyers tend to think differently than other people – indeed, we are trained to think differently. Law school incorporates extended exercises in legal reasoning, where the students apply evolving systems of rules to diverse and varied facts.¹⁴ We colloquially call the non-linear thought process of legal reasoning “thinking like a lawyer.”

The judge advocate can provide an

outside-the-box perspective in MDMP and help detect gaps or deficiencies in a proposed course of action. Judge advocates view problems through a rule-of-law lens to provide the commander with options.¹⁵

A hallmark of an effective executive officer or S-3 is the ability to maximize the staff's talents. When I was on a brigade staff, the executive officer would invite the brigade judge advocate and the public-affairs officer (PAO) to small-group sessions on Army design methodology. Why? Because the brigade judge advocate has insight into the rules that apply to a problem and the consequences of a decision. The PAO can help predict how external audiences will react. Specialty staff members often offer a unique perspective to understand and frame a problem. Leaders who understand and harness the strengths of their staffs will make the organization stronger overall.

Stewardship of profession

Stewardship is a commitment to strengthen the Army as a profession.¹⁶ At its core, stewardship believes that the American people have entrusted Army leaders with their sons, daughters and material resources. Army leaders thus have a sacred obligation to care for these assets.¹⁷ Commanders must establish a professional climate that fosters teamwork and strengthens trust.¹⁸ Decisions and actions must be right, both today and tomorrow.¹⁹ Judge advocates can assist leaders with ensuring appropriate stewardship at the strategic, organizational and individual levels.

“Living up to the American people's trust is something we have to do every day,” said Army Secretary Ryan D. McCarthy when addressing the murder of SPC Vanessa Guillen, coupled with the high numbers of crimes and deaths at Fort Hood, TX.²⁰ “[Leaders must] have the human decency to show compassion for our teammates and to look out for the best interests of our Soldiers.”²¹

According to GEN (Retired) Carter Ham, many senior commanders make the same failures as those identified in the Fort Hood report.²² GEN Ham

cautioned leaders at every level to ensure they properly resourced sexual harassment/assault response and prevention offices as well as “legal staffs and investigative staffs.”²³ Clearly, judge advocates and their associated staff are vital to ensuring proper stewardship of the military profession.

Soldiers deserve a justice system that creates and enforces appropriate standards of ethical and legal conduct. They must trust that their commanders will investigate allegations of misconduct impartially and will fairly and uniformly discipline those who violate the rules.

Judge advocates are often officially appointed as the formal ethics adviser to the command. They also play a critical advisory role in the investigative process and actively participate in military-justice administration. For a holistic picture of the organization, the legal section can provide essential insight to commanders and their staffs on processing timelines and trends of indiscipline. Together, commanders and their legal advisers can overcome the challenge of broken trust and continue winning the nation's wars while stewarding our profession.²⁴

Principled counsel

The former Judge Advocate General of the U.S. Army, LTG (Retired) Charles Pede, called principled counsel “the constant we drumbeat as a corps.”²⁵ Principled counsel is “professional advice on law and policy ... effectively communicated with appropriate candor and moral courage, that influences informed decisions.”²⁶

Credible legal advisers speak truth to power.²⁷ While other staff sections are designed for mission accomplishment (for example, the S-1 offers human-resources solutions, while the S-4 delivers logistics results and so on), the judge advocate is uniquely empowered to advise on a legally sufficient “yes” – or in rare cases, a “no” (such as when law or policy forbids a proposal).²⁸ Frequently, the legal adviser must be the voice of caution in the face of momentum-gathering groupthink.²⁹ Ultimately, the legal adviser wants to achieve the commander's vision while avoiding poor decisions that endanger careers and erode the

Army's credibility with the public.

Judge advocates provide value to the command by offering comprehensive legal advice that is timely and accurate.³⁰ On average, the legal adviser, along with the unit physician, is the most highly educated person on a commander's staff. Mind you, this does not necessarily mean the attorney is the smartest person in the room – but it does mean he or she has extensive experience in researching complex issues quickly and providing legal advice based on the latest laws, regulations and other applicable authorities.

Commanders do not want advice that is quick and wrong; they want their staffs to provide rapid, accurate analysis. LTG Pede liked to say such advice must be “expert, well-researched and delivered at the speed of war.”³¹

Military attorneys are not just legal advisers but also trusted counselors and advocates.³² As BG (Retired) Richard Gross, former legal counsel to the Chairman of the Joint Chiefs of Staff, put it, “Legal counsel is two words: ‘legal’ and ‘counsel.’”³³ Commanders count on their judge advocates not only for legal opinions but non-legal guidance as well.³⁴ Judge advocates are in the problem-solving business, guiding our clients through personal and professional difficulties in addition to giving professional advice.³⁵

The judge advocate can be a trusted sounding board for commanders and staff alike. I have often been in the room with commanders as they agonized over a decision – and not always a legal one. Principled counsel requires the critical character attribute of empathy to connect with others when they are vulnerable and to offer candid advice.³⁶

The art of communication is sometimes overlooked in the profession of arms.³⁷ Judge advocates are professional communicators and as such have much to offer in not only their legal advice but in helping others with staff work.³⁸ In the movie *Office Space*, the “two Bobs” ask employee Tom Smykowski what value he provides to the company. Flustered, he angrily erupts, “I have people skills! I am good at dealing with people!”³⁹

Your judge advocate has people skills, too. No matter the issue, your attorney may have valuable input. Give us a call!

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Notes

¹ *Office Space*, directed by Mike Judge, 20th Century Fox, 1999.

² Susan Landrum, “The Most Frustrating Phrase in Law School: ‘It Depends,’” *Law School Success*, Aug. 14, 2014; <https://lawschoolacademicsuccess.com/2014/08/14/the-most-frustrating-phrase-in-law-school-it-depends/>.

³ Field Manual (FM) 6-0, *Commander and Staff Organization and Operations*, Washington, DC: Headquarters Department of the Army, April 22, 2016.

⁴ LTG (Retired) Charles N. Pede, “Putting Principled Counsel into Action,” *The Army Lawyer*, No. 4, Washington, DC: U.S. Army Judge Advocate General's Corps, 2020.

⁵ FM 1-04, *Legal Support to Operations*, Washington, DC: Headquarters Department of the Army, June 8, 2020.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ MAJ Matt D. Montazzoli, “The Mosaic Principle (book review),” *The Army Lawyer*, No. 4, Washington, DC: U.S. Army Judge Advocate General's Corps, 2020.

¹⁰ *Ibid.*

¹¹ Robert K. Greenleaf, *The Servant as Leader*, Cambridge, MA: Center for Applied Studies, 1970.

¹² LTC Scott Shaw, “Field Grade Officers Play Team Ball,” *The Field Grade Leader*, June 12, 2018; <http://fieldgradeleader.themilitaryleader.com/grad-week-shaw/>.

¹³ LTC David Dunphy, “The Iron Major Survival Guide, Version 2,” *The Military Leader*, June 16, 2014; <https://themilitaryleader.com/iron-major-survival-guide-v2/#respond>.

¹⁴ Edward Hirsch Levi, “An Introduction to Legal Reasoning,” *The University of Chicago Law Review* 15, No. 3, 1948.

¹⁵ Pede.

¹⁶ Army Doctrine Publication (ADP) 6-22, *Army Leadership and the Profession*, Washington, DC: Headquarters Department of the Army, Nov. 25, 2019.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ ADP 1, *The Army Profession*, Washington, DC: Headquarters Department of the Army, June 14, 2015 (superseded).

²⁰ U.S. Department of Defense, “Transcript: Army Leaders and Committee Members Brief Reporters on Findings and Recommendations of the Fort Hood Independent Review Committee,” Dec. 8, 2020; <https://www.defense.gov/Newsroom/Transcripts/Transcript/>

[Article/2440803/army-leaders-and-committee-members-brief-reporters-on-findings-and-recommendati/](https://www.army.mil/article/2440803/army-leaders-and-committee-members-brief-reporters-on-findings-and-recommendati/).

²¹ Ibid.

²² GEN (Retired) Carter F. Ham, "After Fort Hood, the U.S. Army Will Succeed or Fail on Trust," *War on the Rocks*, Dec. 23, 2020; <https://warontherocks.com/2020/12/after-fort-hood-the-u-s-army-will-succeed-or-fail-on-trust/>.

²³ Ibid.

²⁴ "Transcript: Army Leaders and Committee Members Brief Reporters on Findings and Recommendations of the Fort Hood Independent Review Committee," supra Note 20.

²⁵ Pede.

²⁶ COL Russell N. Parson and LTC Patrick L. Bryan, "Navigation from the Leadership Center," *The Army Lawyer*, No. 6, Washington, DC: U.S. Army Judge Advocate General's Corps, 2019.

²⁷ BG (Retired) Rich Gross, "Find Your Yoda: Ten Rules for Being a Rock-Star Operational Attorney," *The Army Lawyer*, No. 1, Washington, DC: U.S. Army Judge

ACRONYM QUICK-SCAN

ADP – Army doctrine publication

FM – field manual

JAGC – Judge Advocate General's Corps

MDMP – military decision-making process

PAO – public-affairs officer

Advocate General's Corps, 2019.

²⁸ BG Joseph B. Berger and MAJ Courtney M. Cohen, "The Critical Character Attribute of Empathy," *The Army Lawyer*, No. 6, Washington, DC: U.S. Army Judge Advocate General's Corps, 2019.

²⁹ MG Stuart W. Risch, "Resilience Is a Shared Responsibility," *The Army Lawyer*, No. 6, Washington, DC: U.S. Army Judge Advocate General's Corps, 2019.

³⁰ BG (Retired) Charles N. Pede, "Communication is the Key – Tips for the Judge Advocate, Staff Officer and Leader," *The Army Lawyer*, Washington, DC: U.S. Army Judge Advocate General's Corps, June 2016.

³¹ Ibid.

³² FM 1-04, *Legal Support to Operations*.

³³ Gross, supra Note 27.

³⁴ Ibid.

³⁵ MG Risch. As BG Gross notes, though, "When you are giving a legal opinion, you are the only one on the staff qualified to do that, and you ought to make that clear to folks without being a jerk. However, when giving non-legal advice or counsel, you are one of many advisers, so keep that in mind."

³⁶ Berger and Cohen.

³⁷ Pede.

³⁸ Ibid.

³⁹ *Office Space*.



Reconnaissance is continuous. (From the Maneuver Center of Excellence "Fundamentals of Reconnaissance" poster series, <https://www.benning.army.mil/armor/fundamentals/RF-6.html>)